

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

BETH FITZGERALD, et al., :  
Plaintiffs, : Case No. 3:04cv397  
vs. : JUDGE WALTER HERBERT RICE  
GULF STREAM COACH, INC., et al., :  
Defendants. :

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DECISION AND ENTRY OVERRULING, WITHOUT PREJUDICE, MOTION  
TO DISMISS OR, IN THE ALTERNATIVE, TO TRANSFER FILED BY  
DEFENDANT GULF STREAM COACH, INC. (DOC. #3)

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One of the Defendants herein, Gulf Stream Coach, Inc. ("Gulf"), has filed a motion, requesting that the Court either dismiss this litigation or transfer it to the Northern District of Indiana, in accordance 28 U.S.C. § 1404. See Doc. #3. Gulf's motion is based upon the forum selection clause set forth in the warranty it had issued to Plaintiffs. Gulf argues that, as a result of that forum selection clause, the Court should either dismiss Plaintiffs' claims against it or transfer this matter. In response, the Plaintiffs have, inter alia, requested that this Court remand this matter for want of subject matter jurisdiction. See Doc. #9. Unless and until this Court concludes that it can exercise subject matter jurisdiction herein, it cannot rule upon Gulf's motion. Accordingly, the Court overrules Gulf's Motion

to Dismiss or, in the alternative, to Transfer (Doc. #3), without prejudice to renewal, if the Court concludes that it can exercise subject matter jurisdiction and, thus, overrules Plaintiffs' Motion to Remand (Doc. #9).

If that motion is renewed, the parties should address the effect of the presence of Defendant Ford Motor Company ("Ford") in this litigation on Gulf's request to transfer this matter. There is no indication that venue is improper as to Plaintiffs' claims against Ford. The Plaintiffs should also indicate their preference, in the event that the Court should ultimately conclude that the forum selection clause prevents them from litigating their claims against Gulf in this judicial district. Is it their preference that the Court dismiss the claims against Gulf, leaving them free to file them in the proper forum and to continue this litigation against Ford in this district, or would they prefer that the Court transfer the entire matter, assuming that same is legally permissible?

September 30, 2005

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/s/ Walter Herbert Rice  
WALTER HERBERT RICE, JUDGE  
UNITED STATES DISTRICT COURT

Copies to:

Counsel of Record.